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The scope and application of the principle of universal jurisdiction

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Report of the Secretary-General

Summary

The present report has been prepared pursuant to General Assembly resolution 69/124, by which the Assembly requested the Secretary-General to prepare a report on the basis of information and observations received from Member States and relevant observers, as appropriate, on the scope and application of universal jurisdiction, including, where appropriate, information on the relevant applicable international treaties, and their national legal rules and judicial practice.

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I. Introduction

1. The present report has been prepared pursuant to General Assembly resolution 69/124. It reflects comments and observations received since the issuance of the report of 2014 (A/69/174) and should be read together with that and prior reports (A/65/181 (2010), A/66/93 and Add.1 (2011), A/67/116 (2012) and A/68/113 (2013)).

2. In accordance with resolution 69/124, section II of the present report, together with tables 1 to 3, focuses on specific information regarding the scope and application of universal jurisdiction on the basis of relevant national legal rules, applicable international treaties and judicial practice. Information received from observers is provided in section III, and section IV contains a synopsis of issues raised by Governments for possible discussion.

3. Responses were received from Austria, Azerbaijan, Belarus, Croatia, Cuba, the Czech Republic, Greece, Jordan, Kuwait, Oman and Peru.

4. Responses were also received from the European Union, the International Civil Aviation Organization,[1] the International Maritime Organization, the Organization for the Prohibition of Chemical Weapons and the International Committee of the Red Cross.

5. The complete submissions are available from the website of the Sixth Committee of the General Assembly.

II. Scope and application of universal jurisdiction on the basis of the relevant domestic legal rules, applicable international treaties and judicial practice: comments by Governments

A. Basic legal rules

1. Constitutional and other domestic legal framework[2]

Austria[3]

6. Austria reiterated comments made previously that under section 64 of its Penal Code, Austrian courts have jurisdiction over certain crimes (for example, extortive abduction, slave trade, trafficking in human beings, organized crime, drug-related crimes, air piracy, terrorism-related acts) committed outside Austria, regardless of locally applicable law, if certain Austrian interests are affected. Under this provision, Austrian courts are also competent for other crimes committed outside Austria, regardless of locally applicable law if Austria is under an obligation to prosecute under international treaties.

7. In the past few years, the number of crimes listed in section 64 has been increased to include additional crimes, such as rape, sexual coercion and torture.

[1] The International Civil Aviation Organization submitted a nil return.

[2] Table 1 contains a list of crimes contained in various codes, as mentioned in the comments by Governments.

[3] For previous comments submitted by Austria, see A/65/181 and A/69/174.

8. On 1 January 2015, an amendment to the Penal Code entered into force. It introduces a new chapter 25 and incorporates specific international crimes under the Rome Statute of the International Criminal Court into Austrian law,[4] in particular crimes against humanity (article 7) and war crimes (article 8) under the Rome Statute, in order to provide full complementary jurisdiction of Austrian courts for these crimes. In this context, a new section of the Penal Code, section 64 (1) (4c), provides that Austrian Courts can exercise jurisdiction over the crimes covered under the new chapter 25 (specifically genocide, crimes against humanity and war crimes) in all cases where:

(a) The perpetrator or victim is an Austrian citizen;

(b) Other Austrian national interests are infringed by the act;

(c) The perpetrator is a foreigner who has his habitual residence in Austria or is present in Austria and cannot be extradited.

9. Austria also reiterated that according to section 65 of its Penal Code, its courts have jurisdiction over crimes committed outside Austria if they are punishable under locally applicable law and if the perpetrator is caught on Austrian territory and cannot be extradited for a reason other than the nature or character of his act.

Azerbaijan[5]

10. The Criminal Code of Azerbaijan, as adopted on 30 December 1999, provides for the principle of universal jurisdiction. Its article 2 ensures that the peace and security of humanity is one of the main objectives of the country's criminal legislation.

11. Under article 12.3 of the Code, citizens of Azerbaijan, foreign citizens or stateless persons who commit crimes against peace and humanity, war crimes, human trafficking, terrorism, financing of terrorism, hijacking, hostage-taking, torture, piracy, illegal trafficking of narcotic drugs and psychotropic substances, forgery, attack on persons or establishments using international protection and crimes concerning radioactive materials, as well as crimes deriving from international treaties to which Azerbaijan is a party, shall be held liable and punished under the Code for those crimes regardless of their place of commission.

12. Additionally, article 13.3 provides that if a person who has committed a crime outside Azerbaijan is not handed over to a foreign State and if the offence is deemed a crime under the Code, that person is subject to criminal prosecution in Azerbaijan

Croatia

13. The Constitution of Croatia does not contain any provision relating to the exercise of universal jurisdiction and its exercise is based on domestic legislation, namely the Croatian Criminal Code. The basic principle on which the application of Croatian criminal law is based is the principle of territoriality. In this regard, article 10 of the Criminal Code (Official Gazette of the Republic of Croatia 125/11, 144/12) provides that criminal law is applicable to anyone who commits a criminal offence on the territory of the Republic of Croatia.

[4] For the list of previously reported crimes, see A/69/174, table 1.

[5] For previous comments submitted by Azerbaijan, see A/65/181 and A/66/93.

14. In order to ensure the application of Croatian legislation with regard to criminal offences committed outside the territory of Croatia, the Croatian Criminal Code recognizes several bases of jurisdiction recognized in international law, such as the active and passive personality principle and the protective principle, including the principle of universal jurisdiction.

15. The principle of universal jurisdiction under the Croatian Criminal Code is based on the assumption that:

(a) It gives each State criminal jurisdiction solely on the nature of the criminal offence, even when the crime was not committed on its territory and its citizens are neither perpetrators nor victims;

(b) It is an expression of international solidarity according to which some States pledge to punish perpetrators of crimes in which they have no direct interest;

(c) In its regulation, a number of preconditions should be taken into account that ensure its implementation in good faith and in accordance with international law rights and obligations.

16. In the Croatian Criminal Code, the principle of universal jurisdiction takes two forms. Under the global form (article 16), the Criminal Code applies to anyone who, outside of the territory of the Republic of Croatia, commits the crime of genocide, crimes against humanity, war crimes, terrorism, torture and other cruel, inhuman or degrading treatment or punishment, slavery and trafficking in human beings, as well as any offence which the Republic of Croatia is obliged to punish under an international treaty.

17. In the second form, a special extraterritorial competence (article 17) regulates the application of the Croatian Criminal Code to aliens who, outside the territory of the Republic of Croatia, commit a crime against a foreign country or a foreign national which is punishable by a prison sentence of five years or more under the laws of the Republic of Croatia and which is not covered by other principles, under the condition that the offence is at the same time punishable under the law of the State in which it was committed (double criminality) and if the extradition of the defendant is permissible by law or treaty but has not taken place. It also provides for the punishment of the offenders who have fled to Croatia and did not commit a crime which Croatia is required to punish under international law, but some other, "ordinary" crime (for example, murder, robbery, traffic violations, etc.).

Cuba[6]

18. The general part of the Cuban Penal Code sets out various articles that underscore the importance of prosecuting or imposing the heaviest sentence for all acts against humanity and human dignity. The conceptual definition of the term "against humanity" and the existence of an individual legal right that is to be protected may be inferred from the criminalization of such acts; the offences are defined in the special part of the Penal Code. While the general part of the Penal Code refers to various offences included in the list of crimes against humanity, there is no explicit reference to "crimes against humanity".

[6] For previous comments submitted by Cuba, see A/65/181, A/66/93/Add.1, A/67/116, A/68/113 and A/69/174.

19. Article 5, paragraph 3, of the Penal Code articulates the will to prosecute and try, at the request of the Ministry of Justice, persons who commit offences against humanity and human dignity, regardless of where the act took place or by whom it was committed. Such considerations have no effect on the application of Cuban criminal law, since, given the nature of such crimes, the principle of global justice overrides the principle of territoriality and the principle of personality or citizenship. The article states: "Cuban criminal law is applicable to non-resident aliens and stateless persons who do not reside in Cuba who commit an offence abroad, if they are in Cuba and are not extradited, whether they reside in the territory of the State in which they perpetrate the offence or in any other State, provided that the offence is also punishable where it was committed. The last-mentioned requirement does not apply if the act is an offence against the fundamental, political or economic interests of the Republic, or against humanity, human dignity or public health, or is indictable under the terms of international treaties."

20. Similarly, article 18, paragraph 4, of the Penal Code sets out a broad understanding of responsibility, stating that all those involved in offences that violate humanity or human dignity shall be considered perpetrators, and consequently receive a heavier sentence, whatever the nature of their involvement. It provides: "In the case of offences against humanity, human dignity or public health, and offences specified in international treaties, all criminally responsible persons shall be considered perpetrators, whatever the nature of their involvement."

Czech Republic[7]

21. The Czech Republic reiterated that its domestic penal law (Law No. 40/2009, Collection of Laws, Criminal Code) recognizes the principle of protection and universality and its jurisdiction in that regard under international treaty obligations.

22. Section 8 of the Czech Criminal Code has been amended and now reads as follows:

> Section 8
> Subsidiary Principle of Universality
>
> (1) The Czech law shall be applied to determine the liability to punishment for an act committed abroad by a foreign national or a stateless person with no permanent residence permit on the territory of the Czech Republic, if:
>
> (a) The act is also punishable under the law in force on the territory where it was committed;
>
> (b) The offender is apprehended on the territory of the Czech Republic, the extradition or surrender proceedings were carried out and the offender was not extradited or surrendered for criminal prosecution or enforcement of a sentence to a foreign State or other authorized subject;
>
> (c) The foreign State or the other authorized subject who had requested extradition or surrender of the offender for criminal prosecution or enforcement of a sentence requested that criminal prosecution be conducted in the Czech Republic.

[7] For previous comments submitted by the Czech Republic, see A/65/181.

[...]

(3) However, such offender shall not be sentenced to a more severe punishment than that stipulated under the law of the State on whose territory the crime was committed.

Greece[8]

23. The principle of universal jurisdiction is one of the traditional jurisdictional principles recognized in Greek criminal law, even though its scope is relatively limited.

24. Article 8 of the Greek Penal Code establishes the principle of universal jurisdiction for the following categories of crimes committed abroad, to the extent that it provides that Greek penal laws are applicable to nationals and foreigners alike, irrespective of the laws of the country where the act was committed:

(a) High treason, treason against the Greek State and terrorist acts;

(b) Crimes concerning military service and the obligation for conscription;

(c) Punishable acts committed by persons in their capacity as civil servants/officials of the Greek State or in their capacity as officials of an organ or organization of the European Union having its seat in Greece;

(d) Acts against or directed at a civil servant/official of the Greek State or a Greek official of an organ or organization of the European Union in the exercise of his/her duties or related to his/her duties;

(e) Perjury in the context of proceedings pending before Greek authorities;

(f) Piracy;

(g) Crimes against the currency;

(h) Slave trade, trafficking in human beings, trafficking, child sex tourism (travel with the purpose of the commission of sexual intercourse or other lascivious acts against minors), rape or abuse or lascivious acts against minors, seduction of children, abuse of or lascivious acts with minors constituting a felony, child pornography, pornographic performance of minors, forced prostitution or sexual abuse of minors for profit or enforced disappearance of a person;

(i) Illegal trafficking in narcotic drugs;

(j) Illegal circulation and trafficking in obscene publications;

(k) Any other crime to which Greek penal laws apply by virtue of specific provisions or international conventions signed and ratified by Greece.

25. National jurisdiction is exercised irrespective of the location of the crime and the nationality of the alleged victim or perpetrator and is concurrent to the eventual jurisdiction of other States. Furthermore, no application by a foreign authority or complaint by the victim is necessary for the prosecution of the act.

26. Law 3658/2008 on "Measures for the protection of cultural property and other provisions" (Official Gazette, vol. A 70/22.4. 2008) stipulates in article 13,

[8] For previous comments submitted by Greece, see A/68/113.

paragraph 4, that the offences provided for in chapter 9 of Law 3028/2002 on the "Protection of antiquities and cultural heritage in general" (Official Gazette, vol. A 153/28.6.2002) are prosecuted and punished according to Greek penal laws, even if committed abroad.

27. It should also be noted that article 2 of Law 3948/2011 (Official Gazette, vol. A 71/5.4.2011) on the "Adjustment of domestic law provisions to the provisions of the Statute of the International Criminal Court ratified by Law 3003/2002 (A 75)" provides that the provisions of this Law are applicable both to nationals and foreigners for all acts enumerated in articles 7 to 15 (i.e. genocide, crimes against humanity, war crimes, violation of the duty of supervision, omission to report a crime), provided that they have been committed:

(a) In the territory of the Greek State or on board Greek vessels or aircraft, wherever they are present, unless they are subject to foreign legislation according to international law;

(b) Abroad, by Greek nationals or foreigners who acquired the Greek nationality after the commission of the act;

(c) Abroad, against the Greek State or Greek nationals.

Jordan

28. Jordan submitted a list of offences relevant to the principle of universal jurisdiction, which can be found in table 1 below.

Oman

29. Oman, convinced of the importance of the principle of universal jurisdiction, has adopted national legislation to regulate judicial cooperation with other States.

30. On 22 January 2000, Oman adopted a law on the extradition of criminals. The law addresses and sets out provisions for the capture of internationally wanted criminals and their extradition to the requesting State, without prejudice to the agreements in force between Oman and other States.

Peru[9]

31. The Peruvian Criminal Code, approved by Legislative Decree No. 635, contemplates the possibility of applying universal jurisdiction, pursuant to its article 2, paragraph 5, which states as follows:

> Article 2. — Principle of extraterritoriality; protective principle; active and passive personality principle
>
> Peruvian criminal law shall apply to any offence committed abroad when:
>
> [...]
>
> 5. Peru is required by international treaties to suppress such offence.

32. Pursuant to article 55 of the country's Political Constitution, treaties in general are part of domestic law. Article 200 of the Constitution also states that, in principle, treaties have the rank of a statute.

[9] For previous comments submitted by Peru, see A/65/181.

> Article 200 — Constitutional guarantees
>
> [...] A constitutional challenge brought in respect of norms that have the rank of a statute — statutes, legislative decrees, emergency decrees, treaties, regulations issued by Congress, regional norms of a general nature and municipal ordinances — that violate the Constitution in form or in substance.

33. Nonetheless, with regard to the hierarchy of human rights treaties, the Peruvian Constitutional Court, which is the autonomous and independent body that reviews constitutional challenges, in its judgement 047-2004-AI/TC, of 24 April 2006, issued by the full Court, stated as follows:

> It should also be noted that while article 55 of the Constitution is a general rule for all treaties, it also establishes a special rule for human rights treaties within the system of sources. The fourth final and transitional provision of the Constitution establishes [...] As can be seen, our system of normative sources recognizes that human rights treaties are used to interpret the rights and freedoms recognized under the Constitution. Such treaties therefore constitute a parameter of constitutionality with regard to rights and freedoms. These treaties are not only incorporated into our domestic law, in accordance with article 55 of the Constitution, but are also incorporated therein by way of integration or interpretive reception, pursuant to the Constitution.

34. In addition, in its judgement 0025-2005-PI, of 25 April 2006, issued by the full Court, the Constitutional Court specified that "international human rights treaties not only conform to our legal order, but also have constitutional rank".

35. In this regard, human rights treaties in Peru have constitutional rank and are part of the domestic legal order; the treaties contemplated in article 2, paragraph 5, of the Criminal Code are included in this set of treaties.

2. Applicable international treaties

36. A list of the treaties referred to, on the basis of information received from Governments, is provided in table 3 below.

37. Kuwait expressed its view that the following international instruments, among others, are consistent with the proposal to apply the principle of universal jurisdiction more universally: (a) 1982 United Nations Convention on the Law of the Sea; (b) United Nations Convention against Corruption; (c) United Nations Convention against Transnational Organized Crime and its three Protocols on the suppression of trafficking in persons, against the smuggling of migrants and against the illicit manufacturing of and trafficking in firearms; (d) international conventions relating to the suppression of all forms of terrorism. Reference was also made to Security Council resolutions.

3. Judicial and other practice

Croatia

38. No Croatian court has ever examined any criminal case initiated in the implementation of universal jurisdiction in its first form (as described in paragraph 16 above) and no domestic practice exists in that regard.

Czech Republic

39. There is no case law with regard to crimes under international law.

Greece

40. Article 8 of the Greek Penal Code has been applied by Greek courts mostly in cases pertaining to the trafficking of narcotic drugs.

Peru

41. To date, Peruvian courts have not heard any case concerning the application of universal jurisdiction, nor have the relevant Peruvian authorities received any extradition requests (passive or active) involving the application of universal jurisdiction.

B. Conditions, restrictions or limitations to the exercise of jurisdiction

Constitutional and domestic legal framework

Azerbaijan

42. Under article 502 of the Code of Criminal Procedure of Azerbaijan adopted on 14 July 2000, the authority to bring a criminal prosecution against a citizen of Azerbaijan suspected of committing an offence in a foreign State resides with the prosecuting authority of Azerbaijan, on the basis of an official request from the competent authority of that foreign State and in accordance with the legislation of Azerbaijan.

43. On the basis of article 75.5 of the Criminal Code, the release from criminal liability on the basis of the statute of limitations does not apply to the persons who committed crimes against peace and humanity, terrorism, financing of terrorism and war crimes. Thus, the persons who committed crimes related to universal jurisdiction are prosecuted and punished regardless of the lapse of time following the commission of the publicly dangerous act (or omission).

44. Article 80.4 of the Criminal Code provides for the punishment of persons who have committed crimes against peace and humanity, terrorism, financing of terrorism and war crimes, regardless of the terms of execution of a court decision.

Croatia

45. The provision of article 16 of the Croatian Criminal Code limits the obligation of the Republic of Croatia as regarding the implementation of universal jurisdiction to a situation when it has the perpetrator "under its authority", which means that the perpetrator cannot be tried in absentia (article 18, paragraph 4, of the Croatian Criminal Code).

46. Additionally, a legal process cannot be started if:

(a) One is being conducted before the International Criminal Court or a court of another State;

(b) A fair trial can be expected before a court of the State where the crime was committed, of the State of which the offender is a national, or another court competent to hear the case;

(c) Criminal proceedings have been conducted in another State, unless they have been conducted contrary to internationally recognized standards of fair trial, in which case criminal proceedings may be instituted only with the approval of the Attorney General.

III. Scope and application of universal jurisdiction: comments by observers

European Union

47. The action of the European Union on the international scene is, inter alia, guided by the principles of the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity and for international law. The European Union promotes multilateral solutions to common problems, in particular in the framework of the United Nations.[10] Furthermore, according to article 21 (2) of the Treaty on European Union, the European Union shall define and pursue common policies and actions and shall work for a high degree of cooperation in all fields of international relations in order to, inter alia, consolidate and support the rule of law, human rights and the principles of international law. It should be noted that the Treaty on the Functioning of the European Union confers upon the European Union certain competences in the area of freedom, security and justice, and in particular with regard to judicial cooperation in criminal matters.[11]

48. The European Union acts on a long-term basis as a strong supporter of the principle that the most serious crimes of concern to the international community as a whole must not go unpunished. It is to be stressed that achieving criminal justice is not only an important value in itself, but it also brings relief to victims, which decreases the desire for revenge. As such, contributing to fighting against impunity has real potential to prevent possible future conflicts.

49. The European Union notes the opinion that the crimes currently covered by the jurisdiction of the Rome Statute of the International Criminal Court, namely, the crime of genocide, crimes against humanity and certain war crimes, are also subject to the principle of universal jurisdiction under customary international law. However, the views and practices of individual States concerning the scope and application of the principle of universal jurisdiction vary widely. This contribution should therefore not necessarily be seen as reflecting the views of all Member States.

50. In the context of the fight against impunity, the universality principle can serve as an additional tool in the exercise of jurisdiction by States.[12] The operation of the

[10] Art. 21 (1) of the Treaty on European Union.

[11] Arts. 82-86 of the Treaty on the Functioning of the European Union.

[12] The EU Genocide Network, in its 2014 strategy to combat impunity, mentions the following: "Member States should ensure that their respective legislation provides for the definition of core international crimes in accordance with international standards and for an exercise of extraterritorial, including universal, jurisdiction over those crimes" (p. 41).

International Criminal Court and of national courts, including when they act on the basis of the principle of universal jurisdiction when applicable, are complementary tools in the fight against impunity.

51. Generally, the exercise of jurisdiction requires a certain nexus between the offence and the State exercising jurisdiction. In State practice, the grounds for exercise of jurisdiction are territoriality and passive or active nationality. Both legal doctrine and State practice also seem to recognize the protective principle as a basis for jurisdiction. This principle would allow the exercise of jurisdiction over certain offences committed against the State as such or against fundamental State functions, including counterfeiting of currency, regardless of where the offence concerned has taken place.

52. In the framework of the fight against impunity and the perpetration of the most heinous crimes, the principle of universal jurisdiction under which it is possible to prosecute perpetrators of international crimes, having its basis in both treaty and customary law,[13] is particularly relevant. Furthermore, international crimes such as genocide, crimes against humanity and torture are generally considered as violations of peremptory norms of international law.[14]

53. The European Union also stresses the importance of the principle of *aut dedere aut judicare* (the obligation to extradite or prosecute a person accused of committing international crimes) under treaty law. This principle has recently been confirmed, with reference to a treaty law basis, by a 2012 judgment of the International Court of Justice in the case of *Belgium v. Senegal*.[15]

54. Concerning universal jurisdiction under treaty and customary law, the European Union emphasizes that the primary responsibility to investigate a crime and prosecute its perpetrators lies with the State having a link to the crime perpetrated.[16] However, universal criminal jurisdiction enables a State to prosecute universally condemned international crimes even when committed by aliens against aliens in the territory of another State or in areas beyond territorial jurisdiction.

55. Traditionally, universal criminal jurisdiction applies to the crime of piracy. Universal jurisdiction over this category helps to ensure that perpetrators of such crimes do not escape punishment. Recently, international practice has witnessed actions by States regarding acts so heinous that every State has a legitimate interest in their suppression and punishment. At this time, however, it would seem that for some States, such conduct includes only the crime of torture.

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[13] See, for example, judgement of the European Court of Human Rights in the case of *Jorgić v. Germany* (2007). Currently, some argue that the judgement concerns only the crime of piracy.

[14] The crimes stated are enumerated in the 2014 Report of the International Law Commission on the obligation to extradite or prosecute (*aut dedere aut judicare*), *Official Records of the General Assembly, Sixty-ninth session, Supplement No. 10* (A/69/10), chap. VI.

[15] *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment of 20 July 2012.

[16] Current European Union legislation in relation to criminal law always provides for a link with the Member State. This can notably be illustrated by the recently adopted Directive 2014/62/EU of the European Parliament and of the Council of 15 May 2014 on the protection of the euro and other currencies against counterfeiting by criminal law, contrary to Council Framework Decision 2000/383/JHA, which provided for universal jurisdiction without any such link and which the Directive replaces. The Directive, in its article 8 (2), does now provide for such a link.

56. Establishing universal jurisdiction over further categories of conduct might help to enforce the most fundamental norms of international law and ensure that such crimes do not go unpunished. However, the lack of consensus on the definition and scope of application of the principle of universal jurisdiction in this category can be observed at the international level. This topic could benefit from further analysis at the expert level.

57. In order to ensure that grave crimes will not go unpunished and led by the understanding that the successful outcome of effective investigation and prosecution of such crimes at the national level depends to a high degree on close cooperation between the relevant national authorities, the European Union has set up a European network of contact points with respect to persons responsible for genocide, crimes against humanity and war crimes.[17]

58. The full text of Council Decision 2002/494/JHA can be found in the Official Journal of the European Union, but an extract from some of its provisions is included below for informational purposes:

> Article 1
> Designation and notification of contact points
>
> 1. Each Member State shall designate a contact point for the exchange of information concerning the investigation of genocide, crimes against humanity and war crimes such as those defined in articles 6, 7 and 8 of the Rome Statute of the International Criminal Court of 17 July 1998.
>
> 2. Each Member State shall notify the General Secretariat of the Council in writing of its contact point within the meaning of this Decision. The General Secretariat shall ensure that this notification is passed on to the Member States, and inform the Member States of any changes in these notifications.
>
> Article 2
> Collection and exchange of information
>
> 1. Each contact point's task shall be to provide on request, in accordance with the relevant arrangements between Member States and applicable national law, any available information that may be relevant in the context of investigations into genocide, crimes against humanity and war crimes as referred to in article 1 (1), or to facilitate cooperation with the competent national authorities.
>
> 2. Within the limits of the applicable national law, contact points may exchange information without a request to that effect.

59. In addition, it can be noted that, in accordance with Council Decision 2003/335/JHA of 8 May 2003 on the investigation and prosecution of genocide, crimes against humanity and war crimes,[18] Member States shall take the necessary measures to inform law enforcement authorities of the presence of alleged perpetrators and to ensure the exchange of information between national law enforcement and immigration authorities in order to increase cooperation between

[17] Council Decision of 13 June 2002 setting up a European network of contact points in respect of persons responsible for genocide, crimes against humanity and war crimes (2002/494/JHA, Official Journal L 167, 26.06.2002, p. 1).

[18] Official Journal L 118, 14.5.2003, p. 12.

national authorities of the European Union Member States, and thus to maximize the ability of law enforcement authorities in different Member States to cooperate effectively in the field of investigation and prosecution of alleged perpetrators of serious international crimes.

International Maritime Organization

60. The International Maritime Organization reiterated its previous comments regarding the basis for universal jurisdiction, as set out in A/66/93, paragraph 116, and A/69/174, paragraph 52.

61. As at 29 April 2015, 165 States were parties to the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation; 33 States were parties to the 2005 Protocol to the Convention, which entered into force on 28 July 2010; 152 States were parties to the 1988 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf; and 29 States were parties to the 2005 Protocol to the 1988 Protocol, which entered into force on 28 July 2010.

Organization for the Prohibition of Chemical Weapons

62. The Organization for the Prohibition of Chemical Weapons reiterated its previous comments regarding the basis for universal jurisdiction, as set out in A/66/93, paragraphs 117 to 120, A/67/116, paragraphs 29 to 32, and A/69/174, paragraphs 54 to 61, underlining that the number of States parties that had adopted implementing legislation to criminalize activities prohibited under the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction had increased from 136 to 140, and that the number of States parties that had included an extraterritorial provision in their legislation had increased from 121 to 124.

International Committee of the Red Cross

63. The International Committee of the Red Cross (ICRC) reiterated its comments regarding the basis for universal jurisdiction, as set out in A/66/93, paragraphs 121 to 140, A/68/113, paragraph 37, and A/69/174, paragraph 62.

64. With regard to State practice, ICRC recalled that, through the ratification of relevant international instruments, States have recognized that the exercise of universal jurisdiction is an important means to end impunity for the commission of war crimes, crimes against humanity, genocide and torture. It underlined that by becoming party to the 1949 Geneva Conventions, for example, 196 States have agreed to either prosecute or extradite all individuals alleged to have committed, or to have ordered to be committed, grave breaches as defined in these Conventions regardless of their nationality. This obligation also applies to the grave breaches as defined in Additional Protocol I of 1977, which has been ratified by 174 States.

65. Moreover, ICRC identified more than 100 States[19] that had established some form of universal jurisdiction over war crimes in their national legal order. In 2014,

[19] "Preventing and Repressing International Crimes: Towards an 'Integrated' Approach Based on Domestic Practice: Report of the third universal meeting of national committees for the implementation of international humanitarian law", vol. I (Geneva, ICRC Advisory Service on International Humanitarian Law, 2013).

while some States have limited the exercise of universal jurisdiction in their territory, others have adopted legislation criminalizing such crimes, as well as provided for universal jurisdiction over crimes perpetrated beyond their borders (for example, in Austria, Burkina Faso, Colombia, Ecuador and Sweden).

66. In addition, and according to the information available to ICRC, there were noteworthy investigations on the basis of universal jurisdiction and uses of and references to universal jurisdiction in various domestic judicial decisions in 2014 (for example, in cases in Canada, Germany, France, South Africa and Spain).[19]

67. ICRC also stressed that promoting the prevention of serious violations of international humanitarian law, as well as the implementation of adequate sanctions mechanisms for such violations, when they occur, has long been an important element of the Committee's efforts aimed at enhancing respect for international humanitarian law. In this regard, ICRC continues, through its Advisory Service on International Humanitarian Law, to offer legal advice and technical assistance to government experts, at their request, on national implementation of international humanitarian law, including the incorporation of war crimes and other international crimes into criminal law and procedure and to promote the application of universal jurisdiction. ICRC also facilitates the exchange of information between States and other actors on international humanitarian law implementation measures, coordinates meetings of experts and conferences, conducts professional training courses and develops specialized tools (such as databases, reports, technical documents) that are made available to States and the general public.

68. In addition, ICRC undertakes various initiatives aimed at supporting States' efforts to implement an efficient system for the repression of serious violations of international humanitarian law, including by asserting universal jurisdiction. This is in keeping with resolution 1 of the thirty-first International Red Cross and Red Crescent Conference (2011), which refers to the four-year action plan for the implementation of international humanitarian law and, in particular, the objective to improve the incorporation and repression of serious violations of international humanitarian law.[20] For example, ICRC continues to engage in consultations with experts regarding the effectiveness of individual criminal sanctions, with emphasis on universal jurisdiction. It also continues to promote its *Manual on the Domestic Implementation of International Humanitarian Law*,[21] which offers a practical tool aimed at assisting policymakers, legislators and other stakeholders in implementing international humanitarian law, including the repression of serious violations of international humanitarian law and the application of universal jurisdiction.

69. In its various national, regional and multilateral engagements on international humanitarian law throughout the world, ICRC continues to address issues relating to the prevention and repression of serious international humanitarian law violations and promotes the application of universal jurisdiction over war crimes.

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[20] Thirty-first International Conference of the Red Cross and Red Crescent, Geneva, 28 November-1 December 2011, resolution 2, four-year action plan for the implementation of international humanitarian law, objective 4.

[21] International Committee of the Red Cross Advisory Service on International Humanitarian Law, *The Domestic Implementation of International Humanitarian Law: A Manual* (Geneva, International Committee of the Red Cross, 2011) (updated in June 2013).

70. ICRC is also in the process of preparing an update to the its Commentaries on the Geneva Conventions of 1949. It intends to launch an updated Commentary on the First Geneva Convention before the end of 2015, which will include valuable legal perspectives on universal jurisdiction within the framework of articles 49 and 50 of the Convention.

71. The principle of universal jurisdiction is also considered by ICRC as an important means to strengthen the prevention and repression of sexual violence in armed conflict, as well as attacks on the wounded and sick, health-care personnel and facilities and medical transport in situations of armed conflict. ICRC is of the view that universal jurisdiction is an effective tool, among others, for States to prevent and respond to such crimes.

72. Under international law, States are the primary entities with responsibility for investigating and prosecuting alleged perpetrators of serious violations of international humanitarian law. When States do not take legal action against individuals suspected of committing such crimes based on their more traditional bases of jurisdiction (territoriality principle, active or passive personality principle and the protective principle), the implementation of universal jurisdiction can serve as an effective mechanism to ensure accountability and limit impunity.

73. While ICRC recognizes the challenges relating to the efficient exercise of the principle of universal jurisdiction — for judicial, procedural and practical reasons — it reiterates its support to States establishing appropriate national legislation to respond to international humanitarian law violations on the basis of all principles of jurisdiction, including universal jurisdiction.

IV. Nature of the issue for discussion: specific comments by States

Belarus[22]

74. Belarus has consistently advocated the need to address impunity and to ensure the certainty of punishment for committed crimes. In its view, universal jurisdiction, in the true sense of the term, can be based only on the norms of international law, both in treaties (by means of criminalization in universal multilateral treaties) and customary law.

75. The criterion for universal jurisdiction should be whether the crime in question is damaging to the interests of every single member of the international community. In that regard, Belarus proposes considering the following crimes as meeting the above criterion: crimes against peace, war crimes, crimes against humanity, piracy, trafficking in persons and cross-border organized trafficking in narcotics and drugs.

76. Belarus supports the desire to reach a collective understanding on the list of crimes to which the principle of universal jurisdiction would apply, as well as on the conditions of its implementation. Moreover, such a collective understanding on the scope and application of universal jurisdiction to such crimes should be based on consensus among States. Reaching such an understanding will make it possible to avoid creating ill-founded conditions for an expansion of the extraterritoriality of

[22] For previous comments submitted by Belarus, see A/65/181.

States and abusive application of the principle of universal jurisdiction in order to interfere in the internal affairs of other States and destabilize their sociopolitical affairs.

Croatia

77. Croatian criminal law, in its normative regulation of the principle of universal jurisdiction, ensures the application of criminal jurisdiction of the Republic of Croatia to the most serious violations of international law, regardless of the location of the crime and the nationality of the perpetrator or the victim, while setting some limitations aimed at ensuring the implementation of this principle in good faith and in accordance with international law. Accordingly, Croatia strongly believes that universal jurisdiction and its implementation should be based on well-established principles and norms, including those related to international cooperation in criminal matters. At the same time, universal jurisdiction should be exercised responsibly and as an exceptional last-resort measure in order to prevent its unwarranted or politically motivated use. Furthermore, universal jurisdiction must be clearly distinguished from the jurisdiction of international tribunals (international criminal jurisdiction) while the issue of competing jurisdictions should be further thoroughly discussed. Finally, Croatia is of the view that discussion on the comparison between the principle of complementarity (the basis for intervention by the International Criminal Court) and subsidiarity would further contribute to clarification of this important subject.

78. Croatia also believes that universal jurisdiction is to be implemented according to a number of principles and preconditions, such as its universality, respect for international due process norms, respect for the principle *non bis in idem*, non-application of a statute of limitations, respect for the principle of subsidiarity (generally meaning primacy of the State whose citizens have committed crimes, against whose citizens crimes have been committed, or on whose territory crimes have been committed, to prosecute the aforementioned crimes), prevention of the abuse or unwarranted use of universal jurisdiction in a unilateral, selective and politically motivated manner resulting in serious negative consequences for the rule of law at the international level, as well as for international relations, and the reasonable, responsible, judicious and predictable implementation of universal jurisdiction in accordance with the relevant rules and guiding principles of various branches of international law and comity.

Cuba

79. Cuba reiterated its specific comments pertaining to the principle of universal jurisdiction, as set out in A/69/174, paragraphs 79 to 87.

Kuwait[23]

80. Kuwait noted that it has become incumbent upon all member States of the international community to extend their national judicial authority to include the investigation of international crimes, without taking into consideration their international nature, and to hold perpetrators to account before their national courts.

[23] For previous comments submitted by Kuwait, see A/65/181 and A/67/116.

81. The question of the adoption of the principle of universal jurisdiction and its application outside the relevant institutions remains unclear and lacks the pertinent parameters, bases and mechanisms necessary in order to determine its scope and application. It is therefore difficult to make generalizations about actual application while it is not regulated by international instruments that prescribe the measures and mechanisms that States are legally permitted to use. Application of the principle without specific detail as to scope and measures will lead to numerous international legal problems.

82. The international community should take into account a number of considerations that are indispensable, including the need to conduct an exhaustive investigation into mechanisms for applying the principle in the light of international realities. The possible sources, scope and nature of universal jurisdiction should be studied and understood, as should the circumstances under which it will be applied and the extent to which application is possible in the absence of those mechanisms. Consideration must also be given to previous relevant laws and the possible impact of international application.

83. Kuwait further noted that there are no obvious disadvantages to the adoption of the principle of universal jurisdiction per se. The major problem lies in determining the scope, manner and procedures for application that will be universally acceptable. There continue to be numerous apprehensions as to what eventual application could entail, particularly if universal jurisdiction were used selectively or arbitrarily, without due consideration being given to the requirements for and standards of universality and the need for international coordination, pursuant to the principle of international justice and equality.

84. The crimes to which the principle of universal jurisdiction could be applied, which include genocide, crimes against humanity and war crimes, are essentially acts that are covered by the classification of crimes contained in the Rome Statute of the International Criminal Court. Accordingly, there is a clear causal link and connection between the concept of universal jurisdiction and that Statute, which makes it essential to point out that it is incumbent upon States parties to the Statute to strengthen their cooperation in activating and applying the principle of universal jurisdiction.

85. It is the opinion of Kuwait that, in principle, there is nothing to prevent the inclusion of the principle of universal jurisdiction in the framework of the Rome Statute or in any of the international instruments referred to in paragraph 30 above or any other similar instrument, provided that the validity of the principle and application of relevant measures is restricted to States parties to or members of such instruments. No judicial obligations should be imposed on other States that have not yet ratified all those international instruments.

86. It is also essential that a differentiation be made between bilateral and regional jurisdiction, which is determined when any two States or a regional group of States conclude agreements on the provision of mutual legal and judicial assistance or bilateral penal cooperation, thereby agreeing to apply particular parameters to bilateral or regional jurisdiction.

87. It is also fitting that the international community, through the United Nations, should firmly establish universal jurisdiction and disseminate it through an international convention or instrument in that regard, with a view towards

systematizing the rules, measures, procedures and means of implementation at the international level. It would then be possible to urge and encourage States to achieve comprehensive global ratification, thereby assuring the universality of such jurisdiction. Such a proposal may be the most apposite and realistic for the purpose of providing the international legal and judicial guarantees necessary to prevent abuse of the principle or alienation from its goals, and in order to ensure the firm establishment of justice and equality and removal of any selectivity that could take place in the implementation of existing international instruments.

88. It should be noted that if universal jurisdiction passed into law, States would have to amend their national legislation in order to allow for the jurisdictional requirements necessary in the light of the principle's universal character.

Oman

89. Oman stressed the importance of upholding the principle of universal jurisdiction in all States, viewing it as vital in the apprehension and prosecution of suspects. It also expressed its belief that the establishment of a team to review the scope of the application of jurisdiction would effectively help to combat international crime.

Peru

90. Given that the application of universal jurisdiction by States still depends on the types of national criminal procedures involved, Peru reiterated its view of the importance of deciding whether the goal is to have each State follow its own criminal procedures or to establish a single procedure for the mandatory application of universal jurisdiction by all States.

91. Peru further noted that since the list of crimes that can trigger the application of universal jurisdiction is, in practice, not a closed one (that is, it could depend on the will of States as expressed in a treaty), the debate on the international crimes to which universal jurisdiction will apply should continue. Likewise, even if the crimes to which universal jurisdiction will apply are determined, efforts should continue to be made to come up with consensual definitions of those crimes.

92. Peru also believes that, given the possibility that various States might be requesting the application of universal jurisdiction all at once, it would be useful to establish the criteria for addressing that challenge.

Table 1
List of crimes mentioned in the comments by Governments concerning which universal jurisdiction (including other bases of jurisdiction) is established by their codes

Crime	*State*
Human trafficking	Azerbaijan, Croatia, Greece
Extortive abduction, slave trade	Croatia, Greece
Sexual crimes against children	Greece, Jordan
Illegal circulation and trafficking in obscene publications	Greece
Enforced disappearance of a person	Greece
Crimes concerning military service and the obligation for conscription	Greece
Punishable acts committed by persons in their capacity as civil servants/officials of the Greek State or in their capacity as officials of an organ or organization of the European Union having its seat in Greece	Greece
Acts against or directed at a civil servant/official of the Greek State or a Greek official of an organ or organization of the European Union in the exercise of his/her duties or related to his/her duties	Greece
Perjury in the context of proceedings pending before Greek authorities	Greece
Organized crime	Jordan
Piracy	Azerbaijan, Greece, Jordan
Terrorism-related acts	Azerbaijan, Czech Republic, Greece, Jordan
Murder and grievous bodily harm	Jordan
Illicit detention or hostage-taking	Azerbaijan, Jordan (as amended by Law No. 41)
Crimes concerning radioactive materials	Azerbaijan
Attacks against civil aviation and maritime traffic	Azerbaijan
Attacks on persons or establishments using international protection	Azerbaijan

Crime	*State*
Illicit trafficking in narcotics and dangerous drugs	Azerbaijan, Greece
Illicit trafficking in stolen and other commodities	Jordan
Fiscal offences	Czech Republic, Greece, Jordan
Robbery and theft	Jordan
Forgery	Azerbaijan, Czech Republic, Jordan
Corruption and bribery	Jordan (as amended by Laws Nos. 11 and 62)
Fraud	Jordan
Environmental offences	Jordan (as amended by Law No. 52)
Genocide	Austria, Croatia, Czech Republic, Greece
Treason	Czech Republic, Greece
Crimes against humanity	Austria, Azerbaijan, Croatia, Cuba, Czech Republic, Greece
War crimes	Austria, Azerbaijan, Croatia, Czech Republic, Greece
Preparation of aggressive war	Czech Republic
Misuse of internationally acknowledged symbols and signs and state coats of arms	Czech Republic
Misuse of a flag and ceasefire	Czech Republic
Rape, sexual coercion	Greece, Jordan
Torture (and other cruel, inhuman or degrading treatment or punishment)	Azerbaijan, Croatia, Czech Republic
Crimes against international law (i.e. criminal jurisdiction based on the nature of the crime, irrespective of its location and of the nationality of the alleged perpetrator or victim)	Azerbaijan, Croatia, Cuba, Greece

Table 2
Specific legislation relevant to the subject, based on information submitted by Governments

Category	*Legislation*	*Country*
Human trafficking and migrant smuggling	Law No. 9 (2009) on human trafficking, article 3, paragraphs (a), (b) and (c); articles 8-11	Jordan
Illicit trafficking in drugs and psychotropic substances	Law No. 11 (1988) on drugs and psychotropic substances, as amended, articles 3, 4, 6-10, 12	Jordan
Illicit trafficking in arms	Law No. 34 (1952) on firearms and ammunition, as amended	Jordan
Terrorism	Law No. 46 on combating money-laundering and the financing of terrorism	Jordan
Forgery and piracy of intellectual property	Law No. 22 (1992) on the protection of authors' rights, as amended; Law No. 33 (1952) on trademarks, as amended; Law No. 32 (1999) on copyrights	Jordan
Smuggling	Law No. 20 (1998) on customs, as amended; Law No. 21 (1998) on antiques, as amended	Jordan
Tax offences	Law No. 34 (2014) on income tax; Law No. 6 (1994) on general sales tax, as amended	Jordan
Protection of cultural property and other provisions	Law 3658/2002 (Official Gazette, vol. A 70/22.4.2008)	Greece
Adjustment of domestic law provisions to the provisions of the Statute of the International Criminal Court ratified by Law 3003/2002	Law 3948/2011, article 2 (Official Gazette, vol. A 71/5.4.2011)	Greece

Table 3
Relevant treaties that were referred to by Governments, including treaties containing *aut dedere aut judicare* provisions

A. Universal instruments

Genocide	Convention on the Prevention and Punishment of the Crime of Genocide, 1948	Croatia
International criminal law	Rome Statute of the International Criminal Court, 1998	Austria, Croatia
Counterfeiting	International Convention for the Suppression of Counterfeiting Currency, 1929	Czech Republic
Narcotics	Single Convention on Narcotic Drugs, 1961	Czech Republic
	United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988	Czech Republic
Corruption	United Nations Convention against Corruption, 2003	Czech Republic, Oman
	Criminal Law Convention on Corruption, 1999	Czech Republic
Organized crime	Convention on Cybercrime, 2001	Czech Republic
	United Nations Convention against Transnational Organized Crime, 2000	Czech Republic, Jordan
Piracy	United Nations Convention on the Law of the Sea, 1982	Czech Republic
International humanitarian law	Geneva Conventions of 1949 and the Additional Protocols thereto	Croatia, Peru
	Convention for the Protection of Cultural Property in the Event of Armed Conflict of 1954 and its Protocols of 1954 and 1999	Croatia
Enforced disappearance	International Convention for the Protection of All Persons from Enforced Disappearance	Peru
Torture	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984	Croatia, Peru

Terrorism	Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, 1973	Croatia, Czech Republic
	Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, 1988	Croatia, Czech Republic
	Protocol of 2005 to the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation	Greece
	2005 Protocol to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf	Croatia, Greece
	Convention on the Marking of Plastic Explosives for the Purpose of Detection, 1991	Croatia
	Convention on Offences and Certain Other Acts Committed on Board Aircraft, 1963	Croatia
	Convention for the Suppression of Unlawful Seizure of Aircraft, 1970	Croatia, Czech Republic
	Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1971	Croatia, Czech Republic
	Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1988	Croatia
	International Convention for the Suppression of Terrorist Bombings, 1997	Croatia, Czech Republic
	International Convention for the Suppression of the Financing of Terrorism, 1999	Croatia, Czech Republic
	International Convention for the Suppression of Acts of Nuclear	Croatia, Czech Republic

	Terrorism, 2005	
	Convention on the Physical Protection of Nuclear Material, 1980	Croatia, Czech Republic
	Convention for the Suppression of Unlawful Acts Relating to International Civil Aviation, 2010	Czech Republic
	International Convention against the Taking of Hostages, 1979	Croatia, Czech Republic

B. Regional instruments

Corruption	Organization for Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, 1997	Czech Republic
Organized crime	Arab Convention against Transnational Organized Crime, 2010	Jordan, Oman
Judicial cooperation	Riyadh Convention on Judicial Cooperation	Oman
	Agreement with the States of the Arab Gulf on the Extradition of Individuals Sentenced to Prison Terms	Oman
Enforced disappearance	Inter-American Convention on Forced Disappearance of Persons	Peru
Terrorism	Arab Convention on Combating Money-Laundering and the Financing of Terrorism, 2010	Jordan
	European Convention on the Suppression of Terrorism, 1977	Czech Republic
	Arab Convention on Combating Information Technology Offences, 2010	Jordan, Oman

C. Bilateral instruments

Extradition	Bilateral agreement with India	Oman
Mutual assistance	Bilateral agreement with India	Oman
Terrorism and organized crime	Bilateral agreements with Turkey to combat international terrorism, organized crime and illicit trafficking in drugs and psychotropic substances and with Yemen to combat and prevent criminal acts, particularly those related to terrorism	Oman